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November 16, 2007

**VIA FACSIMILE AND U.S. MAIL**

Mr. Eric Gillies, Project Manager  
California State Lands Commission  
100 Howe Avenue, Suite 100-South  
Sacramento, CA 95825

**Re: Comments on Draft EIR for Venoco Project  
PRC 421 Recommissioning Project (CSLC EIR No. 732)**

Dear Mr. Gillies:

Our firm has been retained by Venoco, Inc., in connection with its proposal to return oil and gas lease PRC 421 to production (the "Project"). As you know, the Draft Environmental Impact Report ("DEIR") for the Project includes a determination that the Project would result in significant and unavoidable "environmental justice impacts." *DEIR Section 4.15.4*. As explained in more detail below, "environmental justice impacts" do not and cannot constitute environmental impacts that are subject to analysis under the California Environmental Quality Act.<sup>1</sup> Further, even if such impacts properly could be studied as part of the DEIR, it would be an abuse of discretion for the California State Lands Commission ("CSLC") to determine that such effects are significant and unmitigable in the case of the Project. We therefore request that Section 4.15 of the DEIR be deleted from the document prior to circulation of the Final Environmental Impact Report for the Project.<sup>2</sup>

<sup>1</sup> Pub. Res. Code § 21000-21177 ("CEQA") and 14 Cal. Code Regs. 15000-15387 ("CEQA Guidelines").

<sup>2</sup> By way of introduction, our firm has particular and deep experience in land use and CEQA related matters. Personally, I have more than 20 years experience advising both public agencies and private developers in CEQA compliance counseling. My practice encompasses all aspects of CEQA compliance at the administrative level, as well as both the prosecution and defense of CEQA litigation when necessary. I have represented clients before the California Supreme Court and the California Courts of Appeal on CEQA and related land use matters, and occasionally serve as an expert witness in these types of disputes. I frequently lecture on CEQA topics and updates and actively participate in state-wide CEQA legislative and regulatory reform efforts.

**“Environmental Justice” Impacts Do Not Constitute  
Impacts Under CEQA**

1. *CEQA Analysis Must Be Limited To Physical Impacts.*

CEQA requires that an environmental impact report (“EIR”) must be prepared for any project that may have “a significant effect on the environment.” *Pub. Res. Code § 21100(a)*. A “significant effect on the environment” is defined “a substantial, or potentially substantial, adverse change in the environment.” *Pub. Res. Code § 21068*. CEQA expands on its definition of “environment” by stating that the significant effects analyzed in an EIR “shall<sup>3</sup> be limited to substantial, or potentially substantial, adverse changes in *physical conditions* which exist within the area” (emphasis added). *Pub. Res. Code § 21100(d)*. These physical conditions could include land, air, water, minerals, flora, fauna, noise, and/or objects of historic or aesthetic significance. *Pub. Res. Code § 21060.5*. The CEQA Guidelines echo this concept: “An EIR shall identify and focus on the significant environmental effects of the proposed project. In assessing the impact of a proposed project on the environment, the Lead Agency should normally limit its examination to changes in the existing physical conditions in the affected area.” *CEQA Guidelines § 15126.2(a)*. CEQA thus requires that all impacts identified in an EIR *must* constitute changes in the physical environment.

The CEQA Guidelines provide the following guidance as to the relationship between social impacts and physical impacts:

Economic and social changes resulting from a project shall not be treated as significant effects on the environment. Economic or social changes may be used, however, to determine that a physical change shall be regarded as a significant effect on the environment. Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project. Alternatively, economic and social effects of a physical change may be used to determine that the physical change is a significant effect on the environment. If the physical change causes adverse economic or social effects on people, those adverse effects may be used as a factor in determining whether the physical change is significant. *CEQA Guidelines § 15064(e)*.

Plainly, social effects in and of themselves do not constitute environmental impacts for the purposes of CEQA analysis. However, actual physical impacts that either cause or result from the social effects may be evaluated.

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<sup>3</sup> The use of the term “shall” rather than “may” indicates that this requirement is mandatory, not permissive.

2. "Environmental Justice Impacts" Are Not Related To Any Physical Impacts.

The DEIR refers to the CSLC's Environmental Justice Policy, which requires "the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations and policies." Inherent in this statement is a consideration of social equality, not physical effect. According to Section 4.15.3 of the DEIR, the CSLC considers that a project would have an "environmental justice impact" if it would:

- Have the potential to disproportionately impact minority and/or low-income populations at levels exceeding the corresponding medians for the County in which the Project is located; or
- Result in a substantial, disproportionate decrease in the employment and economic base of minority and/or low-income populations residing in the County and/or immediately surrounding cities.

Neither of these significance criteria relates in any way to physical impacts on the environment. The criteria are not based upon identifying any degradation in physical conditions such as land, air, water, minerals, flora, fauna, or noise; instead, the impacted element is a social, non-physical construct.

Case law confirms that project effects related to social issues do not merit consideration under CEQA unless they cause, or are included in order to evaluate the severity of, actual physical impacts. For example, in *Citizen Action To Serve All Students v. Thornley*, 222 Cal.App.3d 748 (1990), the court held that the social effects of a school closure plan could not constitute a significant environmental impact subject to CEQA. In that case, the Hayward Unified School District had proposed to close one high school as part of a reconfiguration of its school system. The petitioner argued that the school closure had adverse social, cultural, and economic impacts under CEQA because (among other things) the school to be closed primarily served low-income students; however, the court disagreed. The court correctly pointed out that even if such effects existed, the question was whether they were "cognizable as significant environmental impacts under CEQA," and concluded that they were not. *Id.* at 758. Similarly, in *Goleta Union School Dist. v. Regents of the University of California*, 37 Cal.App.4th 1025 (1995), the court disagreed with the school district's argument that a social effect (there, classroom overcrowding) constituted a significant effect on the environment. The court cited to CEQA Guidelines Section 15064, finding that "the projected increases in student enrollment here do not in themselves constitute a significant physical impact on the environment." *Id.* at 1033.

In the present situation, the DEIR finds that there are environmental justice impacts because an increase in the production and transportation of crude oil could "affect minority and/or low-income populations." *DEIR Impact EJ-1*, p. 4-416. The

DEIR alleges that a large crude oil spill would disproportionately affect a low-income population; it does not argue that the effect on the low-income population itself represents or causes a physical impact. Nor is the DEIR's observation that the spill could impact a low-income population intended to function solely as a factor in the evaluation of whether the spill itself constitutes a significant effect on the environment. Rather, to the extent that the physical effects of the oil spill constitute significant impacts, they are already rigorously studied under other sections of the DEIR, such as Section 4.2 (Safety), Section 4.3 (Hazardous Materials), and Section 4.5 (Hydrology, Water Resources, and Water Quality). Any significant and unmitigable impacts resulting from the possibility of spillage are amply addressed in those sections. President Clinton's Executive Order No. 12898, "Executive Order on Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (the "Executive Order"), states: "[E]ach Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations." *Executive Order § 1-101*. The CSLC's Environmental Justice Policy similarly reads in part: "The Commission pledges to continue and enhance its processes, decisions, and programs with environmental justice as an essential consideration by ... [i]dentifying relevant populations that might be adversely affected by Commission programs or by projects submitted by outside parties for its consideration." As indicated in these documents, an "environmental justice" evaluation is not intended to identify social impacts in order to gauge the significance of a physical impact. Rather, the issue is the identification of a social impact in order to gauge the significance of the social impact itself.

3. *"Environmental Justice," Therefore, Is Not A CEQA Consideration.*

As shown by the analysis above, the "environmental justice impacts" studied in the DEIR are purely social effects, and as such cannot be examined in the DEIR. While environmental justice may constitute an important policy consideration for the decision-makers, it cannot be treated as a physical impact to the environment under CEQA, nor is it subject to all of CEQA's attendant requirements as to mitigation measures, evaluation of alternatives, and adoption of findings. The CSLC points out in Section 4.15.1 of the DEIR that it is required to evaluate environmental justice in its consideration of projects, citing to both the Executive Order and the CSLC's own "Environmental Justice Policy." We do not dispute that such an evaluation may be necessary and valuable. However, we are confident that a CEQA document is *not* the proper venue for such evaluation. Of note, the Environmental Checklist Forum, Appendix G to the CEQA Guidelines, lists environmental factors such as air and water quality (and questions/thresholds pertinent to each topic) to be analyzed in CEQA documents; the concepts of environmental justice or disproportionate effects are nowhere to be found in Appendix G because they are not related to significant effects on the environment. Neither the Executive Order nor the CSLC's Environmental Justice Policy requires that CEQA review incorporate the concept of environmental justice, and as evidenced above, California law actually precludes

“environmental justice” from being analyzed as an environmental impact in a CEQA document.

To the extent that an environmental justice evaluation is warranted, it should be treated similarly to the myriad other issues that have a proper and important place in the decision-making process, but are not part of the CEQA analysis. These issues include the question of General Plan consistency (where the General Plan policies in question do not relate to the environment), fiscal considerations, design concepts, public sentiment, and the overall value of the project to the community. Often, some or all of these topics are explored in a staff report prior to a decision being made. In any event, however, all of these concerns must be addressed outside of a CEQA document. Therefore, Section 4.15 must be deleted from the DEIR for the Project and the topic of environmental justice must be evaluated elsewhere.

**Even if Environmental Justice Impacts Were To Constitute  
Impacts Under CEQA, The Project's Environmental Justice Impacts  
Would Be Less Than Significant**

1. *The DEIR Itself Finds The Impact To Be Less Than Significant.*

Section 4.15.4 of the DEIR begins with a brief description of the areas that could be affected by a crude oil spill, stating that “people with the greatest potential to be impacted by the Project are users of Sandpiper Golf Course and recreational beach users.” *DEIR p. 4-416*. After examining the demographic characteristics of the golfers and beach-goers, the DEIR concludes: “[C]onstruction and operation of the proposed Project would not disproportionately impact minority or low-income populations or result in a substantial disproportionate decrease in the employment and economic base of minority and/or low-income populations in the area.” *Id.* We believe that this is a reasonable conclusion that is based on substantial evidence. As discussed below, it is the remainder of the analysis that is fatally flawed in concluding that a significant impact exists.

2. *The DEIR's Project Study Area Is Incorrectly Defined.*

The “environmental justice impact” alleged in the DEIR appears to be based on harm caused by oil spills released into the ocean, either from an accidental release from a barge or from a problem at Pier 421-1 or Pier 421-2. First, it should be noted that with respect to barge trips, the chances of an accidental release from a barge would be approximately equal throughout the barge's route. Pursuant to the DEIR, the barge trips depart from the Ellwood Marine Terminal (“EMT”) and travel to either San Francisco or Los Angeles. *DEIR p. 4-85*. The chance of an oil spill occurring thus would impact all areas between San Francisco and Los Angeles in a roughly equivalent manner. Therefore, the “impact footprint” for the purposes of analyzing the results of barge spills should be the entire coastline from Los Angeles north to San Francisco. The Project

study area set forth in the environmental justice analysis comprises only a tiny portion of this area; thus, the Project study area is too small for the analysis of barge spills.

With respect to oil spills resulting from problems at the piers, the DEIR states that "oil released to marine waters is assumed to be transported approximately 1 mile northwest of the site and 2 miles to the southeast." *DEIR p. 4-71*. The vast majority of this area, as shown on Figure 4.2-7 of the DEIR, is comprised of a golf course, beaches, and recreational areas, not residences. Furthermore, during the winter months, the winds and the Southern California Current would act to push contaminated water further to the northwest, not toward Isla Vista and the other parts of the Project study area identified in the DEIR. *DEIR p. 4-152*. The DEIR suggests that odors from a possible spill would disproportionately impact the students in the Isla Vista area, but the only discussion as to possible odors from the Project is located in Section 4.4 (Air Quality), which states: "The crude oil that would be produced by the Project and transported through Line 96 to the EMT and barge ... is not expected to be a source of odors that would be a nuisance to the public." *DEIR pp. 4-133 & 144*. The DEIR does not contain substantial evidence to support the contention that Isla Vista and other communities to the east and southeast of the Project site would be impacted in any way by an oil spill to a greater extent than other areas in Santa Barbara, and thus fails to establish an impact under the significance criteria set forth in Section 4.15.3. The Project study area should not have been so seemingly contrived to include only these communities.

3. *Even If The Project Study Area Were Correct, Neither Minorities Nor Low-Income Populations Would Be Disproportionately Affected.*

The DEIR does not include harm to minorities in its description of the alleged significant environmental impact. However, it does analyze ethnicity data for the area on page 4-414, and appears to conclude that no minorities would be disproportionately affected. As demonstrated by DEIR Table 4.15-1, this conclusion is correct; minorities constitute 28.9% of the Project study area, whereas they constitute 27.3% of Santa Barbara County. While the percentage of minorities in the City of Goleta (which encompasses a part of the Project study area) is slightly smaller, at 21.4%, per EPA guidance the proper Community of Comparison to be used should be Santa Barbara County, because it is the smallest governmental unit that encompasses the *entire* Project study area (*i.e.*, the impact footprint). *See DEIR p. 4-413*. As the difference in percentage points is only 1.6, it is clear that there is no substantive distinction between the proportion of minorities residing in the study area and the proportion of minorities residing in the County. Therefore, minorities would in no way be disproportionately affected by the Project.

The DEIR does, however, find that a "low-income population" would be disproportionately affected. We fail to see how the DEIR can make this conclusion based on the evidence presented. According to the DEIR, an average of 77% of the population of the Project study area is between the ages of 18 and 24; most of these residents are

likely students at the University of California - Santa Barbara. The characterization of university students as a "low-income population" simply does not pass the straight-face test. While students all over the United States have little (if any) income, this does not render students in general a "protected class." The goal of the Executive Order was not to protect university students, many of whom are dependents of, and financially supported by, family members who live elsewhere. The goal rather was to protect people who tend to be at a disadvantage in comparison to other populations. There is no evidence to suggest that the students living within the Project study area are from lower-income families. In fact, Isla Vista is a very desirable neighborhood; it is reasonable to assume that the students who live there must have adequate financial resources in order to do so.

Finally, as noted in the DEIR, the areas most likely to be impacted by an oil spill are the beach and recreation areas just to the south of Piers 421-1 and 421-2. *DEIR p. 4-416*. As also noted in the DEIR, "[p]otential users of the adjacent beach could come from any ethnicity or income level." *Id.* The area's beaches are used extensively not only by UCSB students but also by residents of other parts of Santa Barbara County, as well as untold numbers of tourists. Indeed, the nearby Bacara Resort, which is within the Project study area, is one of the most expensive resorts in the area. It would not necessarily be recognized as a "high income" area for the purposes of the U.S. Census, as none of the guests actually reside there, but its presence results in a much higher-income population than the DEIR indicates. There is no evidence to suggest that the recreational population for that area is disproportionately comprised of minority and/or low-income users; in fact, if anything, the beachgoers likely have a higher income than the County's median income. Thus, no minority or low-income populations would be disproportionately harmed by a possible spill.

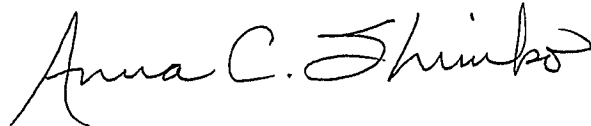
### Conclusion

As you can see, the inclusion of an analysis of "environmental justice impacts" in the DEIR is not permitted under CEQA, and even if it were, the Project's "environmental justice impacts" would not be considered significant and unavoidable. We ask that the CSLC remedy this fatal flaw in the DEIR by removing Section 4.15 and all references thereto throughout the document.

Mr. Eric Gillies  
California State Lands Commission  
November 16, 2007  
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Thank you for the opportunity to submit comments on the DEIR for the Project.  
Please do not hesitate to contact me if you have any questions or comments.

Best regards,

A handwritten signature in cursive script that reads "Anna C. Shimko". The signature is fluid and elegant, with the first letters of the first and last names being capitalized and prominent.

Anna C. Shimko

cc: Stephen Greig  
Deborah Kartiganer